



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division, Eureka Field Office  
601 Startare Drive, Box 14  
Eureka, CA 95501

# PUBLIC NOTICE

PROJECT: Eureka Bio-Solids & Ditch Maintenance

PUBLIC NOTICE NUMBER: 1998-240140N

PUBLIC NOTICE DATE: 04-18-2013

COMMENTS DUE DATE: 05-13-13

PERMIT MANAGER: Kelley Reid

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E-MAIL: Kelley.e.reid@usace.army.mil

1. **INTRODUCTION:** The City of Eureka (POC: Mr. Bruce Young), through its agent, Greenway Partners (POC: Mr. Steve Salzman, Telephone 707-822-0597, 1385 Eighth Street, Suite 201, Arcata, CA 95521), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to apply bio-solids onto an approximately 93-acre property, called "Parcel M" (APNs 302-181-40 and 305-181-05). The project site contains 93 acres, but the bio-solids would be applied to 80 acres of the site, including 74 acres of wetlands, located between U.S. Highway 101, the railroad track, Elk River Slough, and Tooby Road, in the City of Eureka, Humboldt County, California. This Department of the Army permit application is being processed pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

## 2. PROPOSED PROJECT:

**Project Site Location:** Parcel M is owned by the City of Eureka and is within the southernmost city limits, between US Highway 101, the Northwestern Pacific Railroad right-of-way, Elk River Slough, and Danielson Construction's property on Tooby Road (See Figure 1, location map).

**Project Site Description:** The site is generally flat pasture with remnant swales and ditches. The vegetation is predominantly herbaceous emergent hydrophytes, like smartweed (*Polygonum* sp.), goosefoot (*Chenopodium* sp.) and various grasses. There are several poorly maintained ditches and a meandering swale that drains the parcel. The adjacent railroad and its roadbase, functionally a levee, were constructed before 1900. The levee and tide gates allowed the settlers to convert the tidal marsh to pasture

for cattle. Since conversion, the site has been drier and subsiding so that it is now mostly below Mean High Water (MHW), which is 6.24 ft above Mean Lower Low Water (MLLW). There are approximately 6 acres of non Corps-jurisdictional uplands and 74 acres wetland waters of the U.S. (Figure 2)

**Project Description:** The applicant proposes to spray slurry with 3-5% solids (a weight-based concentration of organic solids in water) from the treatment of municipal waste water. The organic residuals, or biosolids, would be sprayed from a water truck during the dry season (June through September) annually and disked into the top 6 inches of the soil. The work is not a regulated discharge of fill material pursuant to Section 404 of the Clean Water Act, but is subject to Section 10 of the Rivers and Harbors Act because it occurs within Section 10 waters, diked baylands which are below MHW. The slurry would fertilize approximately 80 of the 93 acres of the pastureland, including 74 acres of wetlands and 6 acres of uplands. Aside from the sprayed slurry, the project area would not be irrigated. Grass hay for cattle is grown on the site to maintain the open land. The hay would be harvested prior to the next application and the pasture would be managed to benefit Aleutian geese.

**Project Impacts:** This work would occur in diked baylands, below the line of Mean High Water. This would result in fertilization of approximately 74 acres of wetlands and six acres of non-jurisdictional land, which in turn would provide better forage for cattle and geese.

**Proposed Mitigation:** No mitigation is proposed at this time since the project area is a wet pasture and would remain so.

**Project Alternatives:** The city could construct a pipeline under the bay to discharge the bio-solids into the sea or dessicate the biosolids and dispose of them in a landfill. The Corps will conduct an alternatives analysis pursuant to the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. §§ 4321-4347).

### 3. STATE AND LOCAL APPROVALS:

**Water Quality Certification:** State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an *application* to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, North Coast Region, 5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403.

**Coastal Zone Management:** Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Certification or has waived its right to do so. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant the applicant has obtained a Coastal Development Permit from the California Coastal Commission to comply with this requirement.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, North Coast District Office, 710 E Street, Suite 200,

Eureka, California 95501, by the close of the comment period.

### 4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

**National Environmental Policy Act (NEPA):** Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

**Endangered Species Act (ESA):** Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to insure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a *preliminary* determination that Federally-listed species and designated critical habitat are not present at the project location or in its vicinity, and that consultation will not be required. USACE will render a final determination on the need for

consultation at the close of the comment period, taking into account any comments provided by USFWS and/or NMFS.

**Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA):** Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is not present at the project location or in its vicinity, and that consultation will not be required. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

**National Historic Preservation Act (NHPA):** Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with

the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will continue to review cultural and historic databases and will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

**5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES:** Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). Since the project does not entail the discharge of dredged or fill material into waters of the United States, application of the Guidelines will not be required.

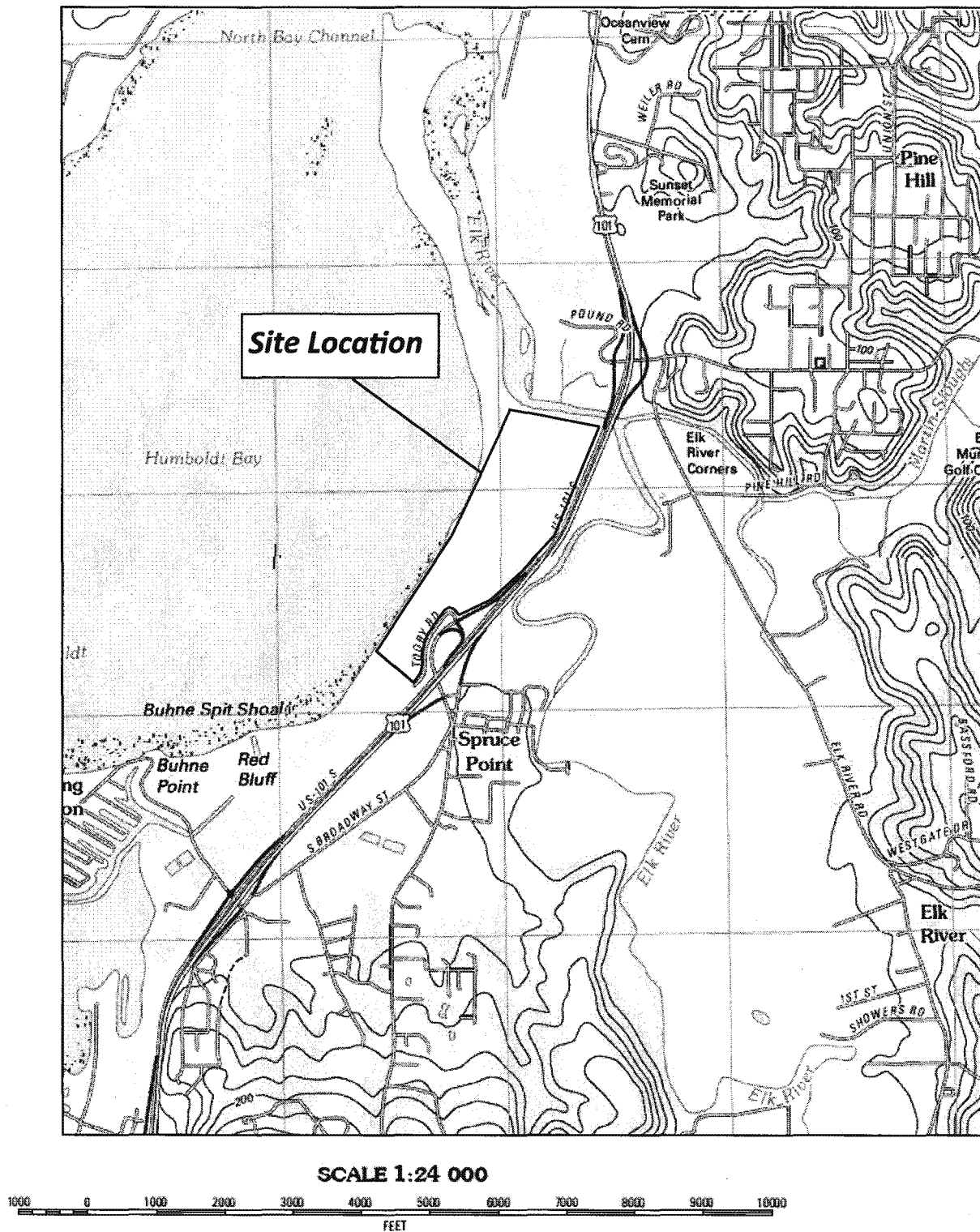
**6. PUBLIC INTEREST EVALUTION:** The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its

intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Current Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.

**7. CONSIDERATION OF COMMENTS:** USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

**8. SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Mr. Kelley Reid, San Francisco District, Regulatory Division, Eureka Field Office, 601 Startare Drive, Box 14, Eureka, California 95501; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail



CONTOUR INTERVAL 20 FEET  
NORTH AMERICAN VERTICAL DATUM OF 1988

This map was produced to conform with the  
National Geospatial Program US Topo Product Standard, 2011.  
A metadata file associated with this product is draft version 0.6.1

**Figure 1**  
**Site Location Map**  
**Eureka Biosolids Application Project**



Wetland Classification

PEM1Cd - Palustrine  
Emergent  
Persistent  
Seasonally Flooded  
Partially Drained/Ditched

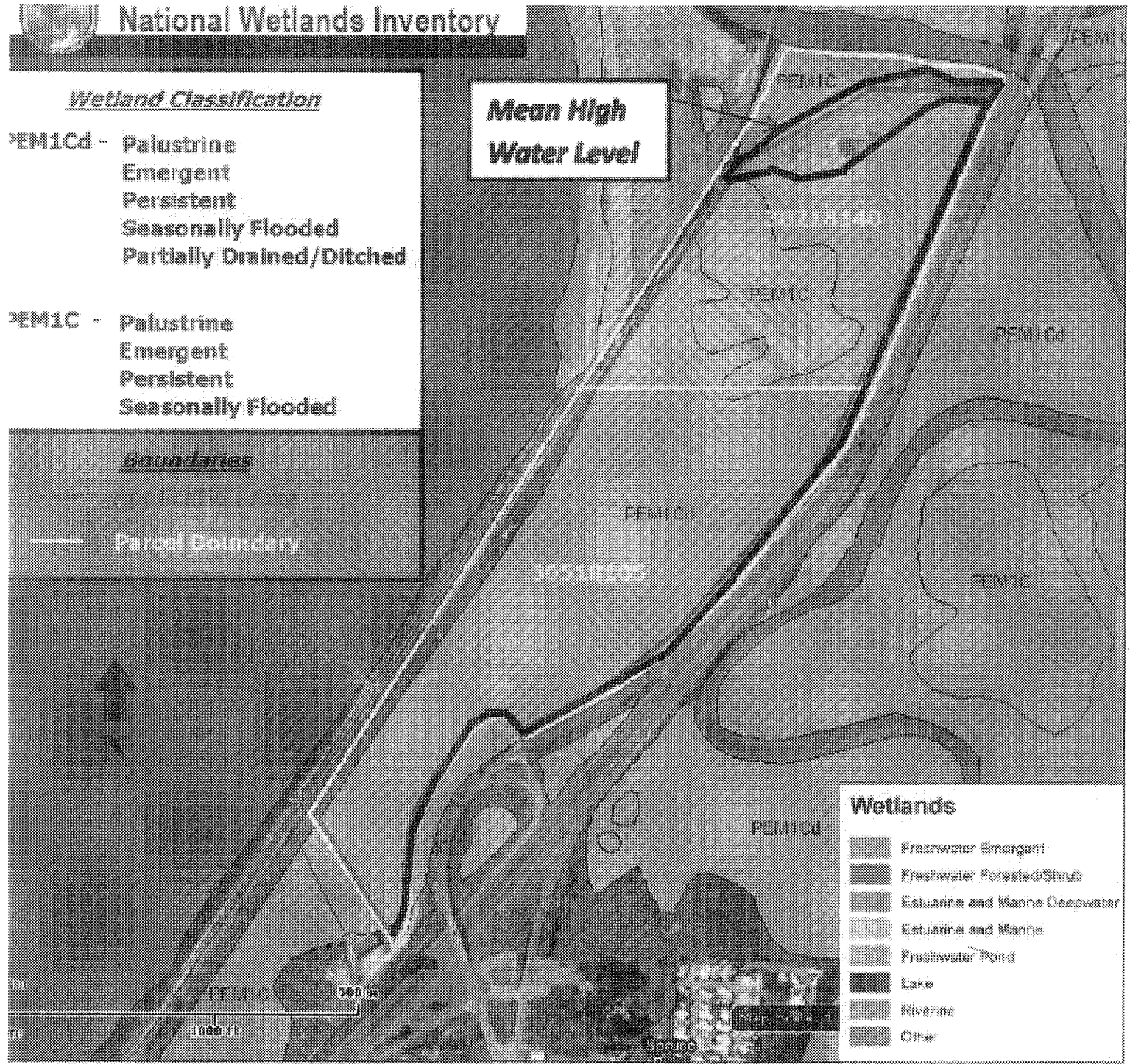
PEM1C - Palustrine  
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Boundaries

--- Section Line

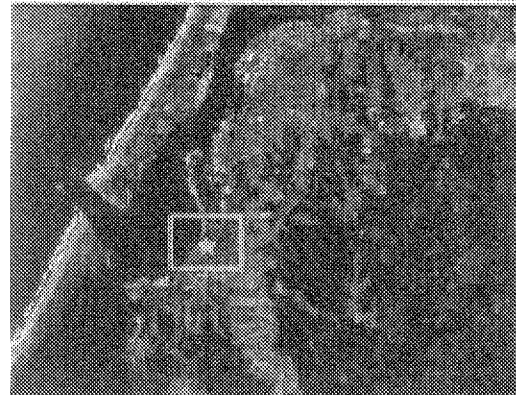
— Parcel Boundary

**Mean High  
Water Level**



**Wetlands**

- Freshwater Emergent
- Freshwater Forested/Shrub
- Estuarine and Marine Deepwater
- Estuarine and Marine
- Freshwater Pond
- Lake
- Riverine
- Other



Assessor's Parcel Nos.

302 - 181 - 040

305 - 181 - 005

Zoned: Coastal  
Agriculture

The two parcels include a total of 93.2 acres. The application area is approximately 80 acres (74 acres are wetlands and 6 acres are uplands). The rest is dikes, roads, and natural areas.

Mean High Water: 6.2 ft.

(City of Eureka)

**Figure 2**

**Preliminary Jurisdictional Delineation**

City of Eureka Riceville